



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** TETRA NAV Industries

**File:** B-239120; B-239120.2

**Date:** August 2, 1990

E.D. Micozzi, TETRA NAV Industries, for the protester.  
Lee Wolanin, Esq., Department of Transportation, for the agency.  
James Cunningham, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Proposal properly was excluded from the competitive range for failure to provide required commitment of key individual to be technical director for contract for "design and prototyping" of component of microwave aircraft landing system.
2. Protester is not an interested party for purpose of objecting to award to another offeror where the protester, whose proposal was excluded from the competitive range, would not be eligible for award even if its protest were to be sustained.

### DECISION

TETRA NAV Advanced Technology Navigation Systems, Inc. (T-N) protests the exclusion of its proposal from the competitive range under request for proposals No. DTRS57-87-R-00048, issued by the Department of Transportation (DOT) for the "design and prototyping," on a cost-plus-fixed-fee basis, of "airborne interrogator precision distance measuring equipment." T-N also protests the proposed award of a contract to Elta Electronics, Ltd. under this RFP.

We deny in part and dismiss in part the protest.

The RFP provided for the submission of technical and business/cost proposals. Offerors were advised by the RFP that the technical proposal was "the most important factor" in the selection of a contractor and included three evaluation criteria: technical capability; corporate

049170/141981

capability; and completion schedule. Corporate capability included "expertise in design, development and manufacture" of the type of equipment procured here and the "facilities and resources available to design, build and test airborne interrogators in-house."

DOT received four proposals (including ones from T-N and Elta) by the RFP's initial closing date. These proposals were then reviewed by DOT's technical evaluation team. DOT's evaluators determined that T-N's technical approach was reasonable (although ranked lower than Elta's) but found that acceptance of T-N's proposal was an unacceptable risk in the absence of a firm commitment from the key individual whom T-N had proposed to be the company's technical director for the contract. Specifically, DOT noted that as a new company, still lacking in facilities and manufacturing experience, "award to T-N would be very risky" in the absence of the commitment and that the proposed key individual had recently left one corporation for another corporation other than T-N. This individual's availability to T-N as its technical director therefore was questionable.

In contrast, Elta's proposal, which was found to have the most advanced technical approach, was rated first overall, and first under all RFP evaluation standards, except one standard under which Elta was tied with the second-ranked offeror. Given the evaluation of T-N's and Elta's proposals and the overall evaluation of the other two proposals (which were rated above T-N's and below Elta's), the contracting officer determined that all four proposals should be included in the competitive range notwithstanding DOT's concern about the availability of T-N's proposed technical director since DOT assumed T-N ultimately could overcome this concern. The contracting officer states that negotiations were thereafter held with the four offerors from August 7 to September 26, 1989.

As to the discussions with T-N, DOT's contracting officer states that T-N was specifically asked for confirmation that the key individual would be "available to work full time as the technical director of the project." Moreover DOT's contract specialist, who actually conducted the discussions with T-N, affirms that he specifically asked a T-N representative during negotiations for a copy of a "signed agreement" which would show that the key individual "would be employed full-time by T-N as the Technical Director" of the contract. Finally, the contract specialist states that on the last day of the negotiations with T-N, he informed T-N's representative that the written agreement between T-N and the key individual had to be included in T-N's best and final offer (BAFO). The contract specialist states that

T-N's representative replied that the agreement would be furnished.

By letter dated September 26, DOT requested BAFOs by October 9 and stated that any BAFO after that date was to be considered "late." T-N, Elta, and one other offeror submitted timely BAFOs by October 9. DOT states that the BAFO it received from T-N made no mention of the key individual in question. Specifically, T-N's BAFO contains an October 6 cover letter which refers only to T-N's transmission of cost summaries with supporting documentation and a certificate of current cost/pricing data. The chairman of DOT's technical evaluation panel states that on October 20 he received another T-N letter, dated that day, in which T-N stated that it had an agreement which provided for the services of the key individual. Enclosed with the October 20 letter were copies of an earlier T-N letter, dated September 20, addressed to DOT's contracting officer, and a typed "To Whom It May Concern" statement (at the bottom of which the key individual's name was typed in). The September 20 T-N letter stated that the key individual had agreed to serve as T-N's Technical Director. However, the attached, unsigned statement provided only that the individual would be "available to participate with T-N" in the work by "provid[ing] Technical Direction and [by] participat[ing] in the Engineering, Development and Qualification Test Activities."

Apart from the untimeliness of T-N's October 20 letter (dated 11 days past the BAFO date), DOT found that the unsigned statement was unacceptable in that it provided only that the individual would "be available to participate with T-N" in the work and that the individual would "provide technical Direction;" however, the copy did not state that the individual would be T-N's full-time technical director for the work. On October 30 DOT's evaluation panel ranked T-N's technical proposal lowest technically of the three remaining proposals and noted that T-N had not satisfactorily resolved DOT's concern about the key individual. On November 8 DOT's contracting officer excluded T-N's proposal from the competitive range because of this unresolved concern.

#### Evaluation of T-N's Proposal

The evaluation of proposals and the resulting determination as to whether an offeror is in the competitive range are matters within the discretion of the contracting activity. Harbert Int'l, Inc., B-222472, July 15, 1986, 86-2 CPD ¶ 67. In reviewing an agency's competitive range determination, we will not reevaluate the technical proposals, but instead

will examine the agency's evaluation to ensure that the evaluation was reasonable. Syscon Corp., B-208882, Mar. 31, 1983, 83-1 CPD ¶ 335. We conclude that DOT properly excluded T-N's proposal from the competitive range.

T-N does not dispute that it was asked to furnish a copy of a signed agreement between T-N and the key individual which would show the individual's commitment to be T-N's full-time technical director for the contract. T-N does argue that its September 20 letter and attached "To Whom It May Concern" statement should have been received by DOT by the BAFO date and, further, accepted by DOT as acceptable evidence of the required commitment.

DOT denies having received T-N's September 20 correspondence until October 20. As we indicated above, there was no reference to such material in the BAFO submission which DOT states it did receive. T-N has not furnished any Post Office or other carrier receipt to establish DOT's receipt of the September 20 letter by the BAFO deadline.

However, even if we assume that DOT should have timely received and considered the September 20 letter and attachment, we conclude that neither document constitutes meaningful compliance with DOT's pre-BAFO request to T-N concerning this individual. T-N's September 20 statement that the individual had agreed to serve as T-N's technical director was no more than an unsubstantiated claim. The "To Whom It May Concern" statement attached to this letter essentially provided only that the key individual was to provide "technical direction" under the contract and was to participate in certain activities under the contract. This statement reasonably may be interpreted as the individual's less than full-time commitment to T-N rather than as a full-time technical director.


T-N has not questioned the Navy's position that the company's proposal had to contain the requisite commitment from the key individual in order to be considered in the competitive range, and we find the Navy's position to be reasonable given its overall evaluation of T-N's proposal. Consequently, we conclude that the Navy properly excluded T-N's proposal from the competitive range.

#### Other Grounds of Protest

T-N has raised several grounds of protest against the proposed award to Elta, which relate either to the evaluation of Elta's proposal or to the question of whether Elta is a responsible prospective contractor for performance of this contract. We need not consider these grounds of

protest, however, because even if they were meritorious T-N would not be in line for the award because its proposal is outside the competitive range. Consequently, T-N is not an interested party for the purposes of raising these grounds of protest, and we therefore dismiss its protest as to them. See Cheshire/Xerox; Miller/Bevco; Automecha, Ltd., B-226939 et al., Aug. 31, 1987, 87-2 CPD ¶ 208.

We deny in part and dismiss in part T-N's protest.

  
for James F. Hinchman  
General Counsel